



UNITED STATES MARINE CORPS  
MARINE CORPS RECRUITING COMMAND  
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6 Mar 96

POLICY LETTER 1-96

From: Commanding General, Marine Corps Recruiting Command

Subj: LEGAL GUIDANCE FOR EVENT PROMOTIONS IN SUPPORT OF  
RECRUITING OPERATIONS

Ref: (a) DOD 5500.7-R Joint Ethics Regulation  
(b) 28 U.S.C. 1346, 2671-2680 (1995)  
(c) MCO 4001.2A

Encl: (1) Hold Harmless and Indemnification Agreement  
(2) Hold Harmless and Indemnification Agreement for Minors

1. Purpose. To disseminate guidance regarding the issues of commercial sponsorship, endorsement, liability, and solicitation, in the guerrilla marketing arena.

2. Background. Recruiting's increased competition for a decreasing number of qualified military considerers has created a demanding situation for less traditional advertising and a more aggressive style of marketing. This "guerrilla marketing" approach has proven to be a successful vehicle for generating both leads and awareness, but its unorthodox style has raised a number of legal questions. In the age of smaller defense budgets and a general apathy toward a military career by many of today's youth, new and creative ways must be explored to attract potential members of the civilian community to join the Marine Corps. These events will serve to accomplish recruiting objectives without running afoul of ethical guidelines. The following guidance incorporates responses from the Headquarters, Marine Corps Judge Advocate Division and the Office of the Counsel to the Commandant, to a request for legal guidance on this topic.

3. Sponsorship. Reference (a) restricts the ability of Department of Defense (DOD) organizations to sponsor events; subsection 3-208 describes "sponsorship" as when a DOD organization is one of many holding that event or in whose name the event is held. Co-sponsorship of events with non-federal entities is prohibited unless certain criteria are met. Those criteria mandate that the head of the DOD organization finds the subject matter of the event relevant to that organization's mission, that the purpose of the co-sponsorship is to stimulate wider interest in those issues, that the co-sponsorship is accomplished through a grant or contract, and that the non-Federal entity is a recognized professional body as approved by the Designated Agency Ethics Official (DAEO). The Judge Advocate Division can assist in identifying a command's DAEO.

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Sponsorship, therefore, is a concept and term that may be employed under limited circumstances, and normally, commercial sponsorship is authorized only for Morale, Welfare, and Recreation (MWR) events. As a result, agreements between Marine Corps recruiting offices and outside businesses or organizations will be in the form of assistance arrangements, rather than "sponsorship."

4. Endorsement

a. Endorsement of a non-Federal entity may be neither stated nor implied by DOD, and DOD employees may not use their titles or positions to suggest official endorsement or preferential treatment. Reference (a) defines "non-Federal entity" as a self-sustaining person or organization established, operated, and controlled by individuals acting outside Federal government duties. Thus, promotional materials may not suggest official Marine Corps endorsement of vendors or products. However, the mere presence of Marine Corps recruiting activities and the holding of physical fitness events to attract potential applicants are not by themselves either an expressed or implied endorsement of the commercial sponsors also present at the event. Factually indicating that prizes and awards will be furnished by a certain company does not, without more elaboration, constitute improper endorsement. Listing donors on flyers or letters, or even posting their respective logos, is not a DOD endorsement.

b. To avoid the appearance of endorsement and eliminate confusion, the Marine Corps name, initials, seal, or emblem may not appear in close conjunction with other corporate logos. Additionally, certain commonplace names may be use-protected and therefore, licensed, trademarked, and unusable without express permission of the holder. Recruiting events will be named something more descriptive and less evocative of other events, such as "Marine Corps Fitness Challenge" vice "Marine Corps Ironman."

5. Liability. Per reference (b), the government may be sued for the negligence of its employees acting within the scope of their employment, whether they are driving a government vehicle or conducting a physical fitness test. Known as the Federal Tort Claims Act, it permits a legitimate claimant injured through Marine Corps negligence to obtain compensation for those injuries; the government, and not the individual Marine, pays for these injury claims. The most practicable way to avoid negligent injury, and minimize exposure to liability in guerrilla marketing events, is to take reasonable steps for the information, safety, and welfare of participants. Such steps would include requiring releases like the samples found in the enclosures, from all participants, limiting participants to potentially enlistable individuals, and allowing only proper entrants into events or run courses. There is no possible way of

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predicting the effect of a single release or waiver in a potential lawsuit since the spectrum runs from states that almost always uphold them and hold a person to his signature, to states that void releases and waivers for public policy reasons and never uphold them. Therefore, though the enclosures are provided as sample releases for use at pull-up challenges, they can be adapted to other physical events, and it is recommended that the Marine coordinator of such an event consult with a staff judge advocate. Furthermore, Marines can exercise control in limiting the accessibility to potential applicants and keep the event from becoming a playground.

6. Support to Non-Federal Agencies

a. Subsection 3-211 of reference (a) permits certain support of non-Federal entity events under some circumstances. For example, use of Marine Corps bands, static aircraft displays, color guards, and battle color detachments at various types of events are bona fide components of our community relations effort in accordance with public affairs regulations. Accordingly, their presence at an event hosted by a non-Federal entity in which commercial sponsors may also be present is not an endorsement of either the non-Federal entity or the commercial sponsors.

b. Further, the head of a DOD-component command (e.g., recruiting station commanding officer) may provide DOD employees in their official capacities as speakers, panel members, or other participants, or on a limited basis, the use of DOD facilities and equipment (and the services of personnel necessary for proper use of that equipment) in support of an event staged by a non-Federal entity. To provide this support, the head of the command must determine the following: the support does not interfere with the performance of duties and in no way detracts from readiness; the non-Federal entity is not affiliated with the Combined Federal Campaign; community relations or other legitimate concerns are served by the support; the event is appropriate for DOD support; the event is of interest or benefits the military or civilian community; the DOD command is able and willing to provide the same support to comparable events; the support is not otherwise restricted by law or regulation; and no admission fee is charged beyond the reasonable costs of the event (except for charitable fundraising events otherwise meeting non-DOD participation criteria.)

c. This provision, therefore would allow a recruiting command to provide Marines and equipment in support of events, if the commander makes the appropriate determinations. Such a support arrangement could be accomplished with only minor modifications. For example, a local high school could have a fitness challenge with support from local Marine Corps units.

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7. Solicitation of Gifts, Awards, and Prizes. Reference (a) prohibits solicitation of gifts from defense contractors. It would be inappropriate for Marines or Marine Corps employees, as well as inappropriate for J. Walter Thompson on behalf of the Marine Corps, to solicit such gifts. However, reference (c) authorizes any Marine commander to accept gifts of perishable items such as food and nonalcoholic beverages for consumption at a specific, one-time event. Similarly, officers exercising special court-martial convening authority may accept gifts of personal property not to exceed \$500.00. Gifts of tobacco and alcohol will not be accepted. Appropriate commanders could, therefore, accept donations of items to be further given away as contest prizes, such as caps, sport bottles, and food coupons. Additionally, for a physical fitness or community relations event, any Marine commander could accept gifts of food and nonalcoholic beverages to be consumed at that event. Consistent with references (a) and (c), donations of event prizes or awards could be considered not as gifts to the Marine Corps, but as gifts to the individual participant directly from the donating organization, with the Marine Corps merely conducting or supporting the event itself. In reverse, Marine commanders are authorized to donate items that would normally be procured and given away as incentive items to events intending to use the items as part of a fundraising auction.

8. Summary

a. The potential liability of the Marine Corps if individuals are injured during guerrilla marketing events should not be a primary consideration in determining whether to conduct them. So long as the events are conducted with reasonable safeguards, open to persons who at least state and appear that they are able to complete the event, together with statements of understanding, the Marine Corps is not unduly exposed to liability.

b. Any arrangements with non-Federal organizations may not suggest that the Marine Corps is officially endorsing or supporting a product, service, or company. The Marine Corps name, initials, or emblem will not appear in close conjunction with other corporate logos or insignia in advertising or announcement literature. Factual statements of support arrangements would be appropriate as long as they do not suggest official endorsement.

c. DOD "sponsorship" of non-Federal entity events is restricted to those of common interest, and the entity must be a recognized professional organization. Thus, sponsoring an event with a motorcycle shop would not be appropriate, but sponsoring an event with a national youth organization might be proper if the DAEO approves the non-Federal organization.

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d. Instead of "sponsorship" in its technical and restricted sense, Marine Corps units can legitimately conduct their own physical fitness and community relations events and distribute awards and prizes donated by local businesses or vendors. To avoid confusion on this issue, the term "sponsor" will be avoided when arranging these events. Instead of an endorsement from the Marine Corps, a factual statement that prizes were provided by certain businesses or organizations would be permissible, as would displaying their logos or insignia.

e. Upon appropriate determination by a commander, facilities, equipment, and the Marines necessary to operate them, may be provided to support non-Federal entity events. This can consist of physical fitness items and the Marines necessary to use them.

f. Awards and prizes for event participants could consist either of gifts to the Marine Corps, properly accepted by the appropriate commander, or gifts directly from the donating business or organization to the event participant. Gifts of food and nonalcoholic beverages for such events could also be accepted by a Marine commander. Gifts of cash will not be accepted.

9. MCRC POC is Captain M. C. Lizotte at DSN 224-3544.



J. W. KLIMP

Distribution:

A

**MARINE CORPS PULL-UP CHALLENGE**

**Hold Harmless and Indemnification Agreement**

Between

**THE UNITED STATES MARINE CORPS and**

\_\_\_\_\_  
(Name)

In consideration of the United States Marine Corps allowing me to participate in the "Pull-up Challenge," being held on

\_\_\_\_\_ at \_\_\_\_\_  
(Date) (Place)

I hereby agree to the following:

1. THAT, I am 18 years of age or older and my birth date is

\_\_\_\_\_  
2. THAT, prior to participating I will inspect the equipment to be used and if I believe anything is unsafe, I will advise the Marine conducting the event of the unsafe condition and refuse to participate;

3. THAT, I acknowledge and fully understand the "Pull-up Challenge" involves risk of serious injury, including permanent disability and death, and severe social and economic losses which might result not only from my own actions, inactions, or negligence, but the actions, inactions, and negligence of others, or the conditions of the premise, or any of the equipment used. Further, there may be other risks not known to myself or not reasonably foreseen at this time;

4. THAT, I assume all risks and accept all responsibility for any damages following such injury, permanent disability, or death;

5. THAT, I intend to be legally bound and hereby release, waive, discharge and covenant not to sue for myself, my parents, guardians, executors, heirs, assigns, and administrators the United States Marine Corps, the Department of the Navy, the United States Government and all agencies and instrumentalities thereof, its agents, officers, servants, and personnel of, from any and all liability, claims, demands, and actions whatsoever, including but not limited to claims based on the negligence of any of the above parties, arising out of or relating to any loss, damage, illness, death, or injury that may be sustained while participating in the "Pull-up Challenge;" and

\_\_\_\_\_  
(Initials Person)

\_\_\_\_\_  
(Initials Witness)

Hold Harmless and Indemnification Agreement, cont'd

6. THAT, I agree to indemnify and hold harmless the United States Marine Corps, the Department of the Navy, the United States Government, and all agencies and instrumentalities thereof, its agents, officers, servants, and personnel of, against all civil actions, claims for loss or damage to the property or the injury, death or disability of myself that is caused or alleged to have been caused in whole or in part from any act having any connection with and/or arising out of participation in this "Pull-up Challenge."

I HAVE READ THE ABOVE RELEASE AND HOLD HARMLESS AGREEMENT. I UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS AND MADE CERTAIN IMPORTANT GUARANTEES BY SIGNING IT AND DO SO VOLUNTARILY.

I HAVE READ THIS RELEASE.

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Witness \_\_\_\_\_

**MARINE CORPS PULL-UP CHALLENGE**

**Hold Harmless and Indemnification Agreement for Minors**

In consideration of \_\_\_\_\_, a minor being allowed to participate in the Marine Corps' Pull-up Challenge to be held on \_\_\_\_\_ at \_\_\_\_\_ the undersigned agree to the following:

1. THAT, prior to participating I/we will inspect the equipment to be used and if I/we believe anything is unsafe, I/we will advise the Marine conducting the event of the unsafe condition and refuse to allow my/our son/daughter/charge to participate;

2. THAT, I/we acknowledge and fully understand the "Pull-up Challenge" involves risk of serious injury, including permanent disability and death, and severe social and economic losses which might result not only from my/our minor's own actions, inactions, or negligence, but the actions, inactions, and negligence of others, or the conditions of the premise, or any of the equipment used. Further, there may be other risks not known to myself/us or not reasonably foreseen at this time;

3. THAT, I/we assume all risks and accept all responsibility for any damages following such injury, permanent disability, or death that might result to my/our minor child;

4. THAT, I/we intend to be legally bound and hereby release, waive, discharge and covenant not to sue for myself/ourselves, my/our parents, guardians, executors, heirs, assigns, and administrators the United States Marine Corps, the Department of the Navy, the United States Government and all agencies and instrumentalities thereof, its agents, officers, servants, and personnel of, from any and all liability, claims, demands, and actions whatsoever, including but not limited to claims based on the negligence of any of the above parties, arising out of or relating to any loss, damage, illness, death, or injury that may be sustained while participating in the "Pull-up Challenge;" and

5. THAT, I/we agree to indemnify and hold harmless the United States Marine Corps, the Department of the Navy, the United States Government, and all agencies and instrumentalities thereof, its agents, officers, servants, and personnel of, against all civil actions, claims for loss or damage to the property or the injury, death or disability to the minor participant that I/we am/are the parent(s)/legal guardian(s) of, that is caused or alleged to have been caused in whole or in part from any act having any connection with and/or arising out of participation in this "Pull-up Challenge."

**I/WE HAVE READ THE ABOVE RELEASE AND HOLD HARMLESS AGREEMENT. I/WE UNDERSTAND THAT I/WE HAVE GIVEN UP SUBSTANTIAL RIGHTS AND MADE CERTAIN IMPORTANT GUARANTEES BY SIGNING IT AND DO SO VOLUNTARILY.**

**I/WE HAVE READ THIS RELEASE.**

Print Name(s) \_\_\_\_\_  
Signature(s) \_\_\_\_\_  
Date \_\_\_\_\_  
Witness \_\_\_\_\_